Abstract Proceedings of the Travancore Legislative Council.

The Council met again in the Dewan's room, Public Offices, at 12 noon on Thursday the 13th December 1894.

PRESENT :—

The Dewan ... *Presiding.*
M. R. Ry. K. Krishnaswamy Rao Avergal.
Mr. F. Watts.
M. R. Ry. V. Nagam Iyer Avergal.
M. R. Ry. P. Thanu Pillay Avergal.
M. R. Ry. Rama Vurma Avergal, Rajah of Perapanad.
M. R. Ry. Ramanatha Rao Avergal.
M. R. Ry. A. M. Muthunayagom Pillay Avergal.

The discussion of the definition of 'Jenmom land' was resumed. As the result of considerable discussion, the following revised definition was adopted by the majority.

"Jenmom land" means land (other than Pandaravagay, Sreepandaravagay, Kandukrishi or Sircar Devaswom land recognised as such in the Sircar accounts) which is either entirely exempt from Government tax, or, if assessed to public revenue, is subject to Rajabhogam only and the occupancy right in which is created for a money consideration (Kanom), and is also subject to the payment of Michavarom or customary dues and the periodical renewal of the right, on payment of renewal fees.

Explanation.—Rajabhogum includes Rajabhogum paid to a Chief within whose free-hold estate the land is situate."

Mr. Krishnaswamy Rao moved that in clause 4 of section 3, the word 'demise' be substituted for 'transfer' and the words 'by whatever name such demise is designated' for 'in consideration of kanom and of renewal fees by whatever name such transfer is designated.'

Mr. Thanu Pillay seconded the motion.

Carried.

Mr. Muthunayagom Pillay moved that in clause (5) of section 3, the word 'for' be substituted for 'at the date of' and 'as arthom or consideration' for 'at the date of the kanapattom as kanom.'

Mr. Watts seconded the motion.

Carried.

Mr. Watts moved that the word "Pauttom" be defined as follows:—

(9) "Pauttom" means the assessed rent of the holding prior to the deduction of interest due to the Kudiyan on the Kanam, in order to determine the Michavarom due to the Jenmi."

Mr. Nagam Iyer seconded the motion.

Carried.

Mr. Nagam Iyer said:—"According to notice given, I propose that in section 3, clause 13, Explanation I (a), the words 'or domestic' be added after the word 'agricultural' and before the word 'purposes.' The storage or supply of water for 'domestic' purposes is as much an improvement to the holding as that for agricultural purposes. Drinking water wells in a kanapattom property will considerably enhance its value. So I have no doubt in proposing, that this be added to the clause."

Mr. Thanu Pillay seconded the motion.

Carried.

The Rajah of Perapanad moved that in Explanation I (c) of clause 13 of Section 3, the words "and the protection or maintenance of such trees, the same having grown spontaneously during the tenancy" be added after 'trees.' He said:—

"My reason for moving this amendment is that society will, in the long run, be a loser, as no tenant is likely to care to protect and maintain trees grown spontaneously, unless he is to be rewarded for his labours."

Mr. Nagam Iyer seconded the motion.

On being put to the vote, the Council were equally divided in opinion and the motion was lost by the President's vote.

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Mr. Nagam Iyer said :—" I propose that in Section 3, Clause 13 Explanation I (e), the following words be added ' of dwelling houses, cattle sheds or other structures, permanent walls or strong fences which are not of a temporary nature ' after the words ' farm buildings.' The term ' farm buildings ' does not include these, which are *all improvements* that go to enhance the value of a holding, and should therefore be covered by the definition of the word ' Improvement.' These will have cost the tenant considerable labor and money and he is entitled to the value thereof when evicted. It would be a great hardship to the tenant to be told that such structures are excluded from the definition. I therefore commend it to the careful consideration of the Council."

Mr. Watts seconded the motion.

In opposing the motion, Mr. Krishnaswamy Rao said :—

" Under the law as it now stands, buildings are treated differently from plantations and purely agricultural improvements. In the case of the latter, the Jenmi is bound to pay the value and take the improvements, but in the case of buildings, the tenant has the option of removing them. The rulings as to the right of the Kudian to claim the value of buildings are not uniform. Local usages serve now as a guide in this matter. Where the value of buildings is allowed, it is the full value in its existing condition, not $\frac{3}{4}$ or $\frac{1}{2}$ as in the case of other improvements. The claim for the value of buildings, is now made to depend upon the view the Court takes, as to their being suitable to the holding, and consistent with the conditions on which the holding was let. The tenant could not at the time of erecting the buildings foresee what the Court would think of this kind of work. His chances of getting the value of buildings will be in the inverse ratio to the cost he may incur. Even to him, the proposed amendment is of doubtful utility. Usage seems to me to be the best rule in this respect."

The Rajah of Perapanad objected to costly dwelling-houses being included in improvements, entitling the kanamdar, at the time of eviction, to be compensated.

On the motion being put to the vote, it was carried by a majority.

Mr. Muthunayagom Pillay moved that in the place of section 4, the following be substituted.

" When a Jenmi transfers by sale, gift or otherwise the jenmom right in the whole or any part of his jenmom lands and the Sircar imposes or enhances the tax on the jenmom lands transferred, such tax shall be borne by the transferee."

Mr. Ramanatha Rao seconded the motion.

Carried.

Mr. Krishnaswamy Rao moved the following addition, as second para to section 5. " In the absence of an express contract, nothing in this section shall be taken to confer the right of permanent occupancy on the kudiyan of a non-Malayalee Brahmin Jenmi unless he or his predecessors in interest or both have uninterruptedly held the holding for a period of not less than 25 years.

" The provisions of para 2 do not apply to assignees of Malayalee Brahmin jenmies."

He said :—

" The last para of the Royal Proclamation of 1042 saved the right of the Jenmies to grant fresh leases of a revocable character. As, according to the decisions of the courts, non-Brahmin Jenmies were not governed by the Proclamation, they could not be expected to have borne in mind the special provisions of the last para of the Proclamation, in granting fresh leases. To make all the leases granted by them since 1042, irrespective of their terms, irrevocable, (which will be the effect of this section) would be to place them under greater disadvantages than those under which the Brahmin Jenmies are. Where the lease granted confers the right of permanent occupancy, there will be no difficulty whatever. But if the lease is silent as to its duration, it will be unjust to find fault with the non-Brahmin Jenmi for not availing himself of the provisions of the last para of the Royal Proclamation which, according to the rulings of the courts, did not apply to him. Unless there were at least two renewals of the lease, it would be unreasonable to say that the non-Brahmin Jenmi intended to make the grant a perpetual one. The shortest period of two renewals may be taken to be 25 years. In cases where a tenant has

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been allowed to hold possession *continually* for 25 years, we may have very good ground to presume that the Jenmi intended to create a permanent tenancy."

Mr. Muthunayagom Pillay seconded the motion.

He said :—

"I need hardly say that there are Jenmies *and* Jenmies. My friend Mr. E. Ramaiyer pointed out to the last Council that it appears from the Sircar accounts that while there are non-Brahmin Jenmies owning more than two thousand parahs of land, there are others who hold but two compounds. It will not be denied that some at least of these Jenmies have long enjoyed the right of ousting their tenants. The deprivation, indiscriminately, of the inherent right of these owners of property of dealing with their possessions as they like, would work a serious hardship on the poor Jenmies who never contemplated the creation of an irrevocable tenure when they first demised their lands. One of the grounds on which Sir T. Madhava Rao justified the enactment of 1042, was that the Jenmi was a person 'devoted to religious duties and otherwise unfit to carry on agricultural operations.' I ask, can the non-Brahmin Jenmi be said to belong to a non-cultivating class, and especially, can the poor non-Brahmin Jenmi with but "two compounds" be said to be unfit to carry on agricultural operations. Evidently, Sir Madhava Row had in mind the Brahmin Jenmi only when he wrote as above. The reason that applies to the Brahmin Jenmi does not hold in the case of all the non-Brahmins. Why then should a Kanapattom demise made by the latter be deemed irredeemable *simply* because he happens to be the holder of lands which are classed as Jenmom in the accounts. It might be urged by the other side, that a non-Brahmin Jenmi should have or might have provided expressly for redemption in his deeds of Kanapattom, if he ever intended to redeem, and having failed to do so, the presumption of irrevocability that prevails in the case of the Brahmin Jenmi should equally hold in the case of the non-Brahmin. This contention is untenable, whether we apply it to the Kanapattoms created before the Proclamation of 1042, or after. For, before 1042 (when the law took away the right of redemption) every Kanapattom was treated as no better than an ordinary mortgage and was in theory at least, redeemable, whether there was the clause for redemption or not; the redemption clause was a superfluity and no Jenmi would have deemed it necessary to expressly provide for redemption. Since 1042, the non-Brahmin Jenmi would have continued the same practice, for, the courts declared in no unmistakeable language that the Proclamation did not apply to him and no rights that he already enjoyed of unconditional eviction were to be affected by the omission of the clause for redemption, which was required to be inserted only with regard to revocable leases granted by Brahmin Jenmies. It follows then that unless we have a more or less clear indication of an understanding between a non-Brahmin Jenmi and his tenant, not to revoke a Kanapattom, we should be slow to presume, much less to declare that a permanent and irredeemable tenure was intended. I would therefore advocate the adoption of this and other provisos, which would enable the Courts to distinguish the redeemable from the irredeemable Kanapattoms of non-Brahmin Jenmies. The presence of certain characteristics, in addition to those which are to be looked for in the case of demises by Brahmin Jenmies, should be insisted on before the Kanapattom made by a non-Brahmin Jenmie is declared irrevocable."

Mr. Thanu Pillay, in supporting the above proposition, said:—"As observed by the President, the proposed 2nd para cuts away a portion of the basis of the 1st para, viz., the right of permanent occupancy being regarded as an essential element of Kanapattom tenure. But the arguments urged on the other side are of great weight. I have carefully studied Sir Madava Row's Memo and the correspondence that passed between him and the Resident and the then Sadr Court prior to the introduction of the Royal proclamation of 1042; and I feel persuaded that the term Jenmi was or rather was intended to be used in the Proclamation as embracing both Malayalee Brahmin and non-Malayalee Brahmin Jenmies. But the Courts took a different view and interpreted the term so as to confine it to Malayalee Brahmin Jenmies alone; and that interpretation must be accepted as the law until it is corrected by the legislature. On the principle that ignorance of law is no excuse we must presume that all transactions entered into between non-Malayalee Brahmin Jenmies and their tenants subsequent to the first formal decision which contained the above interpretation, were in accordance with that decision, viz., that the ordinary law applied to transactions between non-Malayalee Brahmin Jenmies and their kudiyans. It is this presumption that at once necessitates and justifies the new provision. As a matter of public policy too, the proposed amendment is not, in my

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opinion, open to serious objection—for, I believe, the number of kanapattoms created for the first time during the last 25 years may not be large and the bulk of the transactions will be of the nature of renewals of previously executed deeds, which do not fall under the proposed 2nd para—a renewal being no interruption, but only evidence of uninterrupted possession. For these reasons, I support the proposition."

Mr. Nagam Iyer said :—" In the class of Jenmies in Travancore, we are now endeavouring, for the first time, to create a division based on 'caste' distinctions, which I believe is unnecessary and will work serious harm to a large number of His Highness' subjects. Whether a Brahmin or not, a Jenmi is a Jenmi in all respects, and has in Travancore all the privileges and responsibilities of such, without reference to his 'caste.' There are in the Sircar accounts, persons of different castes returned as 'Jenmies' and these have hitherto acted as Jenmies, under the Royal Proclamation of 1042. According to a statement of 'Thirattu' I hold in my hand, there are at present in Travancore 17 classes of such Jenmies, of whom only 3 are returned as belonging to the Brahmin caste. Excluding the 'Devasoms' there are 13 other classes of what are now called non-Brahmin Jenmies, among whom are included the Perumpadappu Swarupam (Cochin Rajah), Kodungallur Swarupam, Pandarathinmar, Tambakkanmar, Tirumalpadanmar, Koilammamar, Paliathu Menon, Vadayathu vaga, Madambimar vaga &c., all of whom will according to the amendment now proposed, be thrown out of the class 'Jenmies' and made ordinary land-lords or proprietors with power to resume the lands in the hands of their kanapattom tenants. These tenants whom we propose to disturb are at present *permanent occupancy* tenants just as much as the tenants of Brahmin Jenmies are; for their land-lords are 'Jenmies' in every sense of the term according to the Royal Proclamation of 1042. Judging from the 'Thirattu' statement already referred to, there are about 25,000 to 30,000 ryots, so holding land under these 13 classes of Jenmies. This surely is a large class of His Highness' agricultural population, whom we have no right to declare by one stroke of the pen as mere 'tenants-at-will'. Reference has been made by the learned Chief Justice to judicial decisions, in which 'Jenmies' have been interpreted to mean only Brahmin Jenmies. If so, we should make the meaning of the Royal Proclamation more explicit and declare here, that *both* Brahmin and non-Brahmin Jenmies have been included in the class. The class of tenants affected by judicial decisions must be a very limited one. Their condition cannot justify our disturbing the far larger class of tenants who have trusted to *permanent* occupancy, and who have hitherto behaved to their Jenmies *exactly* as the tenants of Brahmin Jenmies have done. The prosperity of Travancore depends mainly on the happy relations that subsist between the Jenmies and tenants. I pray that nothing should be done by this Council to disturb this happy relationship. If the amendment is passed, it would mean that the presumption is that the *kanapattom* tenant of a non-Brahmin Jenmy, is not a permanent tenant. The fact is that he is *such* under the Royal Proclamation of 1042. He can be construed to be a tenant-at-will only, if any specific contract exists to that effect. The Proclamation is very clear on that point and we should adhere to it strictly."

The Council adjourned to the following day.

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